

Appeals from Bureau of Land Management decisions rejecting Alaska Native allotment applications. 1/

Affirmed.

Alaska: Native Allotments – Withdrawals and Reservations: Generally

A decision rejecting an Alaska Native allotment application because the land was withdrawn and the applicant did not initiate and complete substantial use and occupancy for a five-year period prior to the withdrawal or reservation, will be affirmed where the decision accords with the Secretarial Instructions of October 18, 1971.

APPEARANCES: William D. Rives, Esq. of Davis, Wright, Todd, Riese & Jones, Seattle, Washington, for appellants.
Loretta C. Douglas, Esq., Office of the Solicitor, Department of the Interior, for the United States.

<u>1/</u>	Christian G. Anderson	F-16936
	*Alice Agiak	F-16282
	Mildred Aishanna	F-16285
	*Maria Solomon	F-16319
	*Mickey Agiak	F-16503
	Eve K. Ahlers	F-16622
	Mary Ann Rexford	F-16648
	Herman Aishanna	F-18810
	Irene Oyagak	F-18915

- * Appellant withdrew allotment application; appeal is dismissed for that reason alone. However, the case is listed in the consolidated appeal because it is listed in the appeal brief.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The appellants herein have appealed from separate decisions of the Fairbanks Office, Bureau of Land Management, rejecting their Alaska Native allotment applications filed under 43 U.S.C. 270-1, -2, -3 (1970). Each decision recited that the land had been withdrawn since 1943 and since the applicant showed less than five years continued use and occupancy prior to the withdrawal the application must be rejected in accordance with the Secretarial Instruction of October 18, 1973.

The October 18 instruction, in pertinent part, provides as follows:

Use and Occupancy of Withdrawn or Reserved Lands

Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native Allotment Act. With respect to reserved or withdrawn land, if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted.

As examples of application of the above, note the following:

1. Where a Native has initiated and completed substantial use and occupancy of the land for five years prior to the withdrawal or reservation, the allotment may be granted, even though the land is still withdrawn at the time of application.
2. Where a Native has not completed the five-year period of statutory use and occupancy of lands prior to the effective date of a withdrawal or reservation of the lands, the allotment application should be rejected.

Appellants assert that lands within the Arctic National Wildlife Range, originally withdrawn in 1943, are open to allotment.

The land under application was "withdrawn from sale, location, selection and entry under the public land laws" on January 22, 1943, by Public Land Order 82. Although some of the 67 million acres covered by that withdrawal were released and restored to entry on December 8, 1960 (Public Land Order 2215), the subject land was covered into the Arctic National Wildlife Range by Public

Land Order 2214 of December 8, 1960, and withdrawn for wildlife purposes. Thus, the land involved has been segregated from entry under the public land laws at all times since 1943.

Appellants argue that Congress impliedly authorized entry under the allotment act when it enacted the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1601 *et seq.* (Supp. II, 1972). They urge that section 14 of the Act (43 U.S.C. § 1613), which authorized surface disposals under certain conditions to the Village Corporation in Petroleum Reserve No. 4 and the National Wildlife Refuge System recognized native entry for allotment purposes. The reverse is true. Congress, cognizant of the effect of the withdrawals and anxious that the Village Corporations should not lose their selection rights, authorized the Secretary to alienate the lands to the Village Corporations under the specific conditions outlined by it. Not only did Congress fail to validate prior non-recognizable and non-existing entries, but it repealed the Allotment Act. A further argument of appellants concerning aboriginal rights was fully discussed in Georgianna A. Fischer, 15 IBLA 79 (1974), and requires no further consideration at this time.

The Native Allotment Act, *supra*, authorizes and empowers the Secretary "in his discretion and under such rules as he may prescribe" to make allotments to Natives who have made satisfactory proof of substantially continuous use and occupancy of the land for five years. In implementing the statute the Secretary directed that the five years use and occupancy must be completed on land then open and unappropriated, i.e., prior to any withdrawal which may close the land to further appropriation. His instruction of October 18, 1973, did not distinguish Arctic National Wildlife Range lands from lands withdrawn for other purposes; his instruction accords with the statutory delegation of duties under the Allotment Act. Also see 43 U.S.C. § 1201 (1970). This Board may not reverse or modify a Secretarial directive. 43 CFR 4.5. However, we will review the decisions below to assure that the Secretarial instructions were properly applied and followed. *Cf. Marvin E. Weaster*, 10 IBLA 277 (1973).

The records are clear that BLM properly rejected the separate applications on the evidence of record. Each record clearly shows that the applicant commenced use and occupancy after 1943, or fell far short of the necessary five-year period of use prior to that date.

No useful purpose would be served by granting the parties' requests for oral argument and the requests are denied.

Therefore, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

